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OFFICE OF PETITIONS

In re Application of	:	
Frank F. Schmeyer	:	
Application No. 09/802,082	:	ON PETITION
Filed: March 8, 2001	:	
Attorney Docket No. 15328.01US2	:	

This is a decision on the petition under the unintentional provisions of 37 CFR 1.137(b), filed May 15, 2007 and supplemented on October 2, 2007, to revive the above-identified application.

The petition is **GRANTED**.

The application became abandoned for failure to timely file a reply within the meaning of 37 CFR 1.113 to the final Office action of November 2, 2006. The proposed reply required for consideration of a petition to revive must be a Notice of Appeal (and appeal fee required by 37 CFR 41.20(b)(2), an amendment that *prima facie* places the application in condition for allowance, a Request for Continued Examination and submission (37 CFR 1.114), or the filing of a continuing application under 37 CFR 1.53(b). See MPEP 711.03(c)(II)(A)(2). No extensions of time pursuant to the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the date of abandonment of this application is February 5, 2007. (February 3, 2007, the due date, was a Saturday).

The petition satisfies the requirements of 37 CFR 1.137(b) in that petitioner has supplied (1) the reply in the form of a continuing application under 37 CFR 1.53(b), (2) the petition fee of \$1500.00, and (3) a proper statement of unintentional delay. Accordingly, the failure to timely reply to the Office action of November 2, 2006 is accepted as being unintentionally delayed.

The petition is not accompanied by a statement of express abandonment in favor of the filing of a continuing application. In order to facilitate action, the petition to revive should include reference to the filing of a continuing application and a letter of express abandonment conditional upon the granting of the petition and of a filing date to the continuing application. Nevertheless, in view of the statement that the reply is the filing of a continuing application, this will be construed as a request to expressly abandon this application in favor of the granting of a filing date to the continuing application. Accordingly, this application is revived solely for the purpose

of continuity with continuing Application No. 11/866,069, filed October 2, 2007. As continuity has been established by the revival of this application, this application is again abandoned in favor of the continuing application. If this was not the intent of applicant, the Office should be promptly notified.

It is noted that the petition was filed with the continuation application papers. In a supplemental petition filed on October 2, 2007, petitioner explains that, pursuant to the advice of the Petitions Branch, he re-filed the application, which has now been assigned Application No. 11/866,069. Petitioner now requests that continuation Application No. 11/866,069 be assigned a filing date of May 15, 2007, the date of filing the original application papers.

Petitioner's attention is directed to 37 CFR 1.4(c), which states that "[s]ince different matters may be considered by different branches or sections of the United States Patent and Trademark Office, each distinct subject, inquiry or order must be contained in a separate paper to avoid confusion and delay in answering papers dealing with different subjects." Therefore, the petition requesting that Application No. 11/866,069 be assigned a filing date of May 15, 2007 should be directed to that application.

An extension of time under 37 CFR 1.136 must be filed prior to the expiration of the maximum extendable period for reply. *See In re Application of S.*, 8 USPQ2d 1630, 1631 (Comm'r Pats. 1988). Since the \$1,020 extension of time fee submitted with the petition on May 15, 2007 was subsequent to the maximum extendable period for reply, this fee is unnecessary and will be credited to petitioner's deposit account.

Additionally, the filing fees submitted for the continuation application will be credited to petitioner's deposit account.

Telephone inquiries concerning this decision should be directed to Kimberly Inabinet at (571) 272-4618.



Frances Hicks
Petitions Examiner
Office of Petitions